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September 16, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

Ex Parte

RE: FOIA Request Control No. 99-163; CC Docket No. 99-117

Dear Ms. Salas:

On September 15, 1999, Melissa Newman, Bill Johnston, Pat Carome and the undersigned, representing U S WEST, met with Susan Steiman of the Office of General Counsel ("OGC") to discuss U S WEST's Application for Review in the above-captioned proceeding concerning MCI's Freedom of Information Act ("FOIA") request for confidential U S WEST data submitted in the Continuing Property Records audit.

U S WEST's purpose in meeting with Ms. Steiman of the OGC was to discuss the legal implications of disclosing confidential audit information and the procedures to be complied with if such information were to be disclosed. First and foremost, it is U S WEST's position that the Trade Secrets Act requires that commercial information, such as that provided by U S WEST during the CPR audit, not be disclosed unless it is "authorized by law."¹ Under controlling Supreme Court authority,² neither Section 220(f) nor Section 154(j) of the Communications Act is the type of statute that provides the Commission with the requisite legal authority to disclose information subject to the Trade Secrets Act. As such, the Bureau's reliance on these sections of the Act as a basis for granting MCI's FOIA request is misplaced. Far from authorizing disclosure, Section 220(f) forbids releasing information collected during an audit unless directed by the Commission or a court.

Rather than authorizing disclosure, U S WEST submits that the plain language of Section 220(f) does nothing more than acknowledge that disclosure may be permissible under some limited circumstances where some other legal authority provides a basis for disclosure. While U S WEST acknowledges that the Commission has previously stated that Section 220(f) may grant it authority to disclose material protected by the Trade Secrets Act, we do not believe that such an interpretation can be reconciled with the plain language of Section 220(f). Similarly, Section 154(j) cannot be read to authorize release of documents protected by the Trade Secrets

¹ 18 U.S.C. § 1905.

² See, Chrysler Corp. v. Brown, 441 U.S. 281, 301-02 (1979).

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Act. This Section is nothing more than a procedural housekeeping statute and provides no authority to disclose protected trade secrets.³

The only authority to release U S WEST's confidential audit information is found in the FOIA and Section 0.457 of the Commission's rules. Section 0.457 requires that the Bureau "weigh the policy considerations favoring non-disclosure against the reasons cited [in the FOIA request] for permitting inspection in light of the facts of the particular case."⁴ The Bureau did no such weighing and mistakenly concluded that it need not reach the merits of U S WEST's Exemption 4 arguments on the grounds that Section 220(f) and 154(j) permit discretionary disclosure. As noted above, these statutes do not authorize the Bureau to disclose confidential audit information and, even if they did, they still would not allow the Bureau to circumvent the requirements of Section 0.457 of the Commission's rules.

If the Bureau had conducted the analysis required by Section 0.457, the Bureau would have found that there is no compelling reason to permit MCI and others to gain access to U S WEST's confidential information. On the contrary, release of confidential audit information would cause competitive harm to U S WEST and impair the Commission's ability to obtain necessary information in the future.⁵ In order to protect U S WEST confidential information and preserve the integrity and efficiency of the audit process, the Commission should reverse the Bureau's decision granting MCI's FOIA request.

In accordance with Section 1.1206(b)(2) of the Commission's rules, this letter is being filed electronically for inclusion in the record of this proceeding.

Respectfully,

James T. Hannon

cc: Susan Steiman
Andy Mulitz

³ Id.

⁴ 47 C.F.R. § 0.457.

⁵ National Parks and Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).